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E.O. 12958: N/A
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SUBJECT: UPDATE ON THE WORST FORMS OF CHILD LABOR FOR THE 2008 TDA
REPORT

REF: 08 STATE 127448

Reftel requested the following information regarding Kenya's implementation of its international commitments to eliminate the worst forms of child labor, as required under the Trade and Development Act (TDA):

A), B) Laws and Regulations

Kenya has ratified ILO Convention 182 on the worst forms of child labor. As called for by Article 4 of the Convention, Kenya developed a list of occupations considered to be the worst forms of child labor.

In October 2007, the Kenyan Parliament passed and President Kibaki signed five labor reform laws that include important provisions on child labor. The Employment Act of 2007 regulates minimum conditions for all employees, including children, in all aspects of employment. The Act defines a child as one aged 18 years and below, harmonizing the labor law with the 2001 Children's Act (described below). The Employment Act defines Worst Forms of Child Labor as "work such as slavery, child prostitution, illicit activities or work likely to injure health of a juvenile - where juvenile relates to ages between 16 - 18 for young persons." Labor and Police Officers are empowered to investigate child labor complaints. A Labor Officer is authorized to cancel an agreement of service between an employer and a child in any labor (except for on-the-job training as per the Industrial Training Act). Children shall not work between 6:30 in evening and 6:30 in the morning (night work).

Children between 13 and 16 years can only be engaged in light work (as prescribed by the Minister of Labor) that is not harmful to their health or development or schooling needs unless it is part of vocational training. Nobody should enter into a written agreement with a child between 13-16 years of age, and no parent or guardian should allow such an agreement to be entered into with a child. Children of this age bracket shall not attend to machinery, or where underground works take place and access is by means of an inlet shaft or hole.

Since many children lack birth certificates, and a person must be at least 18 to receive a national ID card, it can be difficult to determine whether a worker is a legal child. The Employment Act states that a court may determine a dispute as to the true age of the child employed. Where it is not possible to get evidence of true age, the Labor Officer may use his opinion to determine the "true" age of that employee/child.

Any employer found employing a child in any activity not allowed by the Employment Act shall be guilty of an offence and liable to a fine up to 200,000 shillings (about USD 2,560), or up to twelve (12) months imprisonment, or both. If death or injury occurs to a child employed against the provisions of the Act, that employer shall be

liable to a fine up to 500,000 shillings (about USD 6,410) which shall be applied wholly or in part for benefit of the injured child or his/her immediate relatives, or up to twelve (12) months imprisonment, or both.

The Minister may, after consultation with the National Labor Board, make rules providing for any of the purposes for the administration of the Employment Act... for all or any of the following purposes:

- Prescribing the conditions of the employment of women, young persons or children in any specified trade or occupation.
- Prescribing the age at which a child may be employed.
- Requiring employers of children to furnish information about such children or their employment or the conditions of their employment to any specified officer.

Any rule made under this section may distinguish between juveniles of different ages and sexes and, in relation to women or juveniles, between different localities, occupations and circumstances.

The Labor Institutions Act 2007, Section 35 states that a Labor Officer may institute, appear or appeal on behalf of employees in any civil proceedings against his employer and may take into custody and return any child to his parents or guardian, whom he reasonably suspects to being employed in contravention of the Employment Act.

The Kenyan Constitution prohibits slavery, bonded and forced labor, and servitude, including by children. The law prohibits the procurement of girls under 21 for the purpose of unlawful sexual relations, the commercial sexual exploitation of children, and the transportation of children for sale.

The Children's Act of 2001 prohibits all forms of exploitative and hazardous child labor and child sexual exploitation. On July 14, 2006, President Mwai Kibaki signed into law the Sexual Offenses Act, which specifically criminalizes child trafficking, trafficking for sexual exploitation, child prostitution, child pornography and sex tourism, rape and defilement. For child trafficking, the minimum penalty is 10 years of imprisonment plus a fine, and for trafficking for sexual exploitation, the minimum penalty is 15 years of imprisonment, a fine, or both.

The law also prohibits children less than 18 years from being recruited into the military and holds the government responsible for protecting, rehabilitating, and reintegrating into society children involved in armed conflict. The Ministry of Labor is responsible for enforcing child labor laws, but the ministry's enforcement of the laws against child labor continues to be nominal due to a lack of resources.

The Ministry of Labor has only 90 inspectors to cover all types of labor infractions; the ministry expects to boost the number of inspectors to 300 in 2009. There are no reliable statistics on the number of child labor cases investigated by government; there were no convictions. Police are involved in combating child labor through their participation in District Child Labor Committees, which bring together all stakeholders (reps from the ministries of labor, agriculture, education, local authority, and NGOs). In 2008, the government remained active in raising awareness on child labor, including the worst forms of child labor, through its interaction with the District Child Labor Committees.

The police anti-trafficking unit and the Criminal Investigation Department (CID) are responsible for combating trafficking, but are only nominally effective due to a lack of resources and training.

C) Social Programs to Prevent Worst Forms of Child Labor

UNICEF, the Ministry of Tourism and Wildlife, the World Tourism Organization, and NGOs continued to work with Kenyan hotels and tour operators to increase their awareness of child prostitution and sex tourism. They encouraged all hospitality-sector businesses to adopt and implement the code of conduct developed by the NGO End Child Prostitution and Child Pornography and Trafficking of Children for

Sexual Purposes (ECPAT). In 2006, 30 hotels on the coast signed the ECPAT code of conduct. The Ministry of Tourism and Wildlife's campaign to register villas and cottages and impose the same requirements as on hotels resulted in an estimated 1,200 registrations. In 2007, 20 more hotels had signed the code of conduct; during 2008 no additional hotels have signed the code of conduct, but stakeholders continued their efforts to raise awareness.

Many NGOs were active on child labor issues and assisted in the return to school of child laborers. During 2008 the government continued to implement 73 programs for the elimination of child labor with 25 partner agencies. The partners placed the children in schools, vocational training institutions, and apprenticeships, and supported income-generating activities for an estimated 10,000 parents. Partners also provided support to schools for income-generating activities to help keep children from poor families in school.

D) Current Government Policies and Programs

In February 2006, the government renewed the 3-year mandate for the National Steering Committee on the Elimination of Child Labor, which includes the attorney general, eight ministries, representatives of child welfare organizations, other NGOs, unions, and employers. An Inter-Ministerial Coordination Committee on Child Labor chaired by the vice president is responsible for setting general policy. Government policy on combating child labor is guided by the National Action Plan; the ILO, NGOs, and donors use the National Action Plan as a basis for project funding.

Primary education is mandatory in Kenya. Parents have been prosecuted for not sending their children to school, but enforcement of this decision is rare. In 2008, the government together with an NGO operated an emergency toll free hotline to enable children and adults to report cases of abuse, trafficking and child labor, and to speak with trained personnel for counseling and referral to a national network of service providers for assistance.

The government's provision of free tuition for primary and secondary education as well as anti-poverty programs are Kenya's most effective efforts against child labor. The government's free

primary education program (FPE) has raised child enrollment to more than 7.6 million. However, nearly a million children may be out of class due to poverty and cultural considerations, particularly in arid/pastoral areas and in slums. The majority of primary and secondary classrooms are overcrowded; non-tuition school fees (e.g., books/uniforms/feeding) remain deterrents to enrollment. The government has introduced a limited number of mobile schools to help improve enrollment, particularly in the arid/pastoral areas.

The government has mandated the Vice President's office to spearhead the national anti-trafficking initiative, strongly supported by the International Organization for Migration (IOM). With the formation of a coalition government in 2008, the National Steering Committee to Combat Human Trafficking came under the purview of the newly created Ministry of Gender and Children's Development. Due to bureaucratic machinations, the Steering Committee did not meet regularly in 2008, as it had in 2007. As a result, the draft National Plan of Action to Combat Trafficking remains unpublished.

Nevertheless, led by the Ministry of Labor, with the support of IOM, several ministries continued to implement a trafficking education, awareness, and inspection program for the country's 35 foreign employment agencies.

In 2008, the government continued to actively participate in a 4-year, USD 5 million Project of Support to the Kenya Timebound Program on the Elimination of Child Labor funded by USDOL and implemented by ILO-IPEC. The project aims to withdraw 15,000 children and prevent 7,000 children from exploitive labor in domestic service, commercial sexual exploitation, commercial and subsistence agriculture, fishing, herding, and informal-sector street work. The government also collaborated with ILO-IPEC on the USD 5.3 million, regional project, "Building the Foundations for Eliminating the Worst Forms of Child Labor in Anglophone Africa," funded by USDOL.

The government also worked cooperatively on the 4-year, USD 14.5 million "Kenya, Uganda, Rwanda, and Ethiopia Together" (KURET) Project funded by USDOL and implemented by World Vision, in partnership with the International Rescue Committee and the Academy for Educational Development. The KURET Project aims to withdraw or prevent a total of 30,600 children from exploitive labor in HIV/AIDS-affected areas of these four countries through the provision of educational services. In 2008, KURET rescued 5,389 children from exploitive child labor in Kenya and provided education/training opportunities for them. KURET has withdrawn and rescued 7,263 children in Kenya 2004-2008.

During the year the Child Protection Department of the Ministry of Gender and Child Services hired 150 new children's officers. This followed the hiring of an additional 160 officers in 2007. The government's cash transfer program for orphans and vulnerable children (partially funded by UNICEF) expanded in 2008 to reach more than 25,000 children in 17 districts, providing approximately \$8-\$15 (500-1,000 shillings) per child per month to help fund basic needs, including school costs, so that the children would not have to work.

E) Progress and prevalence

In 2008, the government maintained support for efforts to combat child labor and made progress. Extensive poverty throughout Kenya, however, continued to drive child labor, particularly in the informal sector. Child trafficking for labor, including commercial sexual exploitation, continued to be a significant problem during 2008. With additional resources, the government could more effectively fight the widespread problems of child labor and trafficking.

An estimated one million children between five and 17 years of age--most between 13 and 17 years old--worked in 2008; approximately 774,000 of those children were classified as being in child labor. The employment of children in the formal industrial wage sector in violation of the Employment Act was rare. Primarily, children worked on family plots or in family units on tea, coffee, sugar, and rice plantations or herding livestock for their family. Children also worked in fishing and mining, including abandoned gold mines, and small quarries. Children often worked long hours as domestic servants in private homes for little or no pay, and there were reports of physical and sexual abuse of child domestics.

In 2008, thousands of children were exploited for commercial sex. A 2006 study by UNICEF on sex tourism and the commercial sexual exploitation of children along Kenya's coast reported up to 15,000 girls and perhaps up to 30% of all children 12 to 18 engage in "casual" prostitution. It found that up to 3,000 additional boys and girls were engaged in prostitution on a full-time, year-round basis,

and that 45% of girls involved in prostitution and sex tourism were between 12 and 13 when they first engaged in transactional sex. While child sex tourism is a serious social ill, slavery and debt bondage are not problems in Kenya.

Poverty, the death of one or both parents, and self-interest may contribute to a family's decision to place a child with better-off relatives, friends, or acquaintances, who sometimes traffic and/or exploit the child. Child trafficking in Kenya occurs mainly through personal and familial networks. The HIV/AIDS pandemic renders many children orphans, increasing their vulnerability to child labor and trafficking.

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